

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE TRANSPORTATION REGULATION BOARD

In the Matter of the Application of
Ag Processing, Inc., 800 Diagonal
Street, Dawson, Minnesota 56232-
2373, for Variances to the Horizontal
and Vertical Clearance Requirements
of Minn. Stat. §§ 219.46 and 219.47

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDED ORDER

The above-entitled matter came on for hearing before Administrative Law Judge Allen E. Giles on October 5, 1995 at the Minnesota Administrative Truck Center, Second Floor Hearing Room, Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota.

Appearing for the Applicant, Ag Processing, Inc., was Lenny Miller and Lee Gunderson, 800 Diagonal Street, Dawson, Minnesota 56232. Appearing in a technical staff capacity for the Minnesota Transportation Regulation Board was Ronald F. Mattson, Assistant Director, Railroad Administration Section, Minnesota Department of Transportation, 395 John Ireland Boulevard, 925 Kelly Annex, St. Paul, Minnesota 55155.

The record developed for consideration of the Application closed on October 5, 1995 at the close of the hearing.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Public Utilities Commission, as applicable to the Transportation Regulation Board, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

STATEMENT OF ISSUE

Whether the Applicant has demonstrated that the statutory clearance requirement encroachments for which the variances are requested will not create conditions unduly hazardous to its employees or to the employees of common carriers using the tracks if the variances are granted.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Ag Processing, Inc. (hereinafter also referred to as "the Applicant" or "AGP") operates a processing facility in Dawson, Minnesota, where it processes soybeans into soymeal and soybean oil. The soymeal and soybean oil are loaded out of the Facility onto railroad cars for delivery to customers. Since approximately 1986, on a weekly basis, 35 to 50 rail cars of soybean meal and 30-35 cars of soybean oil are loaded out of the Facility for delivery to customers.

2. On August 23, 1995, the Transportation Regulation Board ("Board") received an Application from AGP for variances to both the horizontal and vertical clearance requirements prescribed by Minn. Stat. § 219.46 (1994) regarding the railroad track serving the Facility.

3. On September 1, 1995, the Board issued a Notice of Public Hearing on the requested variances and the notice was published in the Board's Weekly Calendar on September 1, 1995 and weekly thereafter to the date of the hearing. The Notice of Public Hearing was mailed on September 1, 1995 to the following persons: Pat Reisner, Ag Processing, Inc., Box 2047, 12700 W. Dodge Road, Omaha, Nebraska 68103-2047; Lee Gunderson, Manager, Ag Processing, Inc., 800 Diagonal Street, Dawson, Minnesota 56232-2373; Lyle Schutte, Lac Qui Parle Railroad Authority, Box 672, Dawson, Minnesota 56232; Rick C. Ellis, Burlington Northern Railway, 80 - 44th Avenue Northeast, Minneapolis, Minnesota 55421; United Transportation Union, George Clegg, Jr., 3989 Central Avenue Northeast, #103, Columbia Heights, Minnesota 55421; Ron Mattson, Minnesota Department of Transportation, 925 Kelly Inn Annex, Mail Station 470; Terrie Williams, Degree of Honor Building, #600, 325 Cedar Street, St. Paul, Minnesota 55101; Lac Qui Parle Coop. Oil Co., 1099 Diagonal Street, Dawson, Minnesota 56232; Dawson Grain Company, Seventh and Diagonal, Dawson, Minnesota 56232; Melva Larson, City Clerk, Box 552, Dawson, Minnesota 56232.

4. The railroad track at issue is shown on Exhibit 2. AGP is requesting the variance for two reasons: (a) the existing canopy located in the load-out area does not meet statutory clearance requirements; and (b) AGP plans a reconstruction in the load-out area that will require a variance to the statutory clearance requirements.

5. AGP requests a variance to the horizontal and vertical clearance requirements for the existing canopy in the load-out area. The canopy was in place in 1983 when AGP purchased the Facility from Dawson Mills. The canopy was constructed in the 1970s. From the center of the track, the canopy clearance is 22 feet 8 inches from the top of the rails. However, the outer portion of the canopy is 20 feet 3 inches from the top of the rails. The canopy also has several kick braces where the clearance is 19 feet at the side of the car and approximately 17-1/2 feet at the platform side of the tracks. Ag Processing will need both a horizontal and a vertical clearance for the existing canopy.

6. AGP proposes to install a more efficient "load out" system for moving soymeal from the processing/storage area to hopper cars spotted under the canopy. At the present time, it takes approximately three hours to load soybean meal on a rail hopper car, including cleaning and switching time. There is no dust control system on the meal loading conveyors or spout. The present system is not covered and inclement weather conditions affects both product quality and employee safety due to the dust and moisture making the top of the hopper cars very slippery.

7. AGP proposes to install a new load-out conveyor above the canopy with six telescoping spouts through the canopy. After the hopper car is spotted, the employees will open the top hatches and pull the spouts down into the car by about six inches. This will allow loading the soybean meal without the wind blowing it down the track. A dust collection system will also be installed on the conveyors and spouts. After the hopper car is loaded, the spouts would be retracted to the 17-foot level. The new structural support frame for the telescoping spouts will have braces approximately 17 feet high on the platform side of the rail. AGP will need a horizontal and vertical variance to the clearance requirements for the proposed load-out system. Exhibits 4 and 8.

8. AGP employs 62 employees at the Dawson facility. The Facility is in operation 24 hours, seven days a week, and has three shifts. Eight to ten employees are involved in the load-out function. The Facility is brightly lighted. Hopper cars may be spotted anytime of the day or night.

9. AGP indicates that the new load-out facility will have the following environmental and safety impact: the project will provide for a healthier environment in which to work and the employees will be protected by the canopy from the outside elements. The local community will benefit from a cleaner dust-free operation. The project will provide a safer work area for all parties involved. The telescoping spouts will provide the employees with a less strenuous means to load rail hopper cars. The system will reduce hand shoveling and the potential for back strains caused by manual shoveling. The project installation will support existing business and improve the dust collection system on the rail load-out facility. Presently, there is minimal dust collection on the load-out system. The extended spouts will minimize dust pickup by the wind and minimize dust blowing in the surrounding neighborhood.

10. The facility is located on the Lac Qui Parle Railroad. The Lac Qui Parle Railroad is serviced and maintained by the Burlington Northern Railroad. The

Burlington Northern Railroad does not have a problem with the load-out operation as long as AGP obtains a variance.

11. AGP will implement the signage recommendation proposed by the Department of Transportation. That signage recommendation includes the following: (a) on the southerly wall of the facility standard vertical NO-CLEARANCE sign on the east side and west side of the facility; (b) and a standard horizontal NO-CLEARANCE sign shall be mounted overhead at the canopy on the east and west approaches; and (c) AGP will avoid a circumstance where the signage becomes a further encroachment. The NO-CLEARANCE signage will comply with Minn. Rules pt. 8830.9930. Exhibit 6. In the event that the Department of Transportation, after further inspection or review of the signage, determines that different signage is necessary, AGP has agreed to comply with the Department of Transportation requests in this regard.

12. The Department of Transportation has reviewed AGP's proposals and has concluded that the requested variances will not result in an unduly hazardous work environment for employees, but as an added safety factor, no-clearance signage as identified in Exhibit 6 should be installed and maintained as proposed by the Department.

13. The Burlington Northern Railroad and the Unions representing employees of the Burlington Northern Railroad were given notice of the variances being requested by AGP. None of these persons have expressed any opposition in the record of this proceeding.

Based upon foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Transportation Regulation Board has jurisdiction of this subject matter of the hearing.

2. Proper notice of the hearing was timely given and relevant and substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Minnesota Transportation Regulation Board.

3. Ag Processing, Inc. is subject to the clearance requirements prescribed in Minn. Stat. § 219.46 (1994) in connection with the spotting of railroad cars at its unload facility.

4. Any remodeled or rebuilt structure over a railroad track must be built with an overhead clearance of not less than 22 feet from the top of the rail. The rebuilt structure must have a side clearance of eight and one-half feet from the center line of the track. The vertical and horizontal clearances proposed by AGP are less than those prescribed by law, and therefore require a variance ruling by the Board.

5. Persons subject to the clearance requirements prescribed in Minn. Stat. § 219.46 may apply to the Minnesota Transportation Regulation Board for a variance pursuant to the provisions of Minn. Stat. § 219.47, subd. 1 and Minn. Rules pt. 8830.3000. Pursuant to these provisions, the Board may grant a request for a variance

if the overhead or side obstruction at less than required clearance "will not create a condition unduly hazardous to employees" working in the area.

6. The clearance encroachments set forth in Findings of Fact paragraphs 5 and 7, supra, will not create a condition unduly hazardous to AGP's employees or to employees of the common carrier using the railroad tracks and the clearance grants as requested by the Applicant meet the standards set forth in Minn. Stat. § 219.47, subd. 1 and Minn. Rules pt. 8830.3000; so long as signs are posted as prescribed in Finding of Fact paragraph 11.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

It is the Recommendation of the Administrative Law Judge to the Board that it issue the following:

ORDER

That variances for the clearance encroachment set forth in Findings of Fact paragraphs 5 and 7 be GRANTED; that the Applicant shall install, provide illumination when necessary, and maintain the signs described in Finding of Fact paragraph 11 and that upon completion of the construction and installation of the required signage, the Applicant shall notify Mr. Ronald Mattson of the Minnesota Department of Transportation, who will perform an inspection of the installation.

Dated this 18th of October, 1995.

s/ Allen E. Giles

ALLEN E. GILES

Administrative Law Judge

Reported: Tape Recorded; one tape.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1 the Board is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail.